TOKO HING GUAN SDN. BHD.

v.

BANK BUMIPUTRA (M) BHD.

HIGH COURT BORNEO
SYED AHMAD IDID JC
[ORIGINATING SUMMONS NO. K. 72 OF 1989]
1 NOVEMBER 1991

CIVIL PROCEDURE: *Plaintiff seeking a declaration - Whether Court can make a binding declaration - Preliminary objection on jurisdiction - Surprise element - No valid ground - Order 15 r. 16 Rules of the High Court 1980.*

At the hearing of the originating summons there was a preliminary objection by the defence Counsel stating that the Court had no jurisdiction to hear the plaintiff's claims.

The Counsel for the plaintiff, was taken by surprise at this point as the objection had never been canvassed before. Plaintiff contended that the claim was "on the letter of offer made by the defendant bank and accepted by the plaintiff as conclusive contract".

Held:

[1] The learned Judge stressed that the Court does not favour parties taking up actions after another forum has made its decision on the same issue. Here the plaintiff seeks for a declaration and by O. 15 r. 16 of the Rules of the High Court 1980, the Court can make a binding declaration of right whether or not consequential relief is or could be claimed and also by O. 15 r. 16 such proceeding or action is not open to objection.

[2] The Court would have sustained the defence Counsel's preliminary objection if there was valid ground to do so but the learned Counsel was not able to move this Court merely by citing the Land Ordinance without substance to support his objections.

Accordingly, the learned Judge overruled the defence Counsel's objection.

[3] It appears that the Court will have to consider the evidence of the collector and the purchasers of the land by virtue of O. 15 r. 4(3) of the Rules of the High Court 1980.

[Matter postponed to date to be fixed. Plaintiff to confirm to Registry that documentation complete. No order as to costs.]

Cases referred to:

Low Kum Yoon v. Teh Kim Huah [1979] MLJ 63 ***(cit)***
Douglas A Pedley v. Majlis Ugama Islam Pulau Pinang & Anor. [1990] 2 CLJ (Rep) 24 ***(cit)***

Legislation referred to:

Rules of the High Court 1980 O. 15 rr. 4(3), 16
Land Ordinance (Cap 68) (Sabah), ss. 41(1)(a), 41(2), 111

For the plaintiff - Shahabudin (Collin Goonting with him); M/s. Collin Goonting & Co.
For the defendant - Japar N. Esteban; M/s. Lee & Co.

JUDGMENT

Syed Ahmad Idid JC:

I have listened to the preliminary objection by the learned Counsel for the defendant who stated that this Court has no jurisdiction to hear the plaintiff's claims. Mr. Japar N. Esteban cited s. 41(1) (a) of the Land Ordinance - "an appeal shall lie from any order or decision of a Collector ... to the Court but not after expiry of 30 days" and also s. 41(2). The defendant, a bank, had obtained the Collector's sanction under s. 111 of the Land Ordinance. Learned Counsel for the defendant also informed the Court that the lands had been sold way back in 1988.

Mr. Shahabudin, of Counsel for the plaintiff, was taken by surprise at this point as the objection had never been canvassed before. Plaintiff contended that the claim was "on the letter of offer made by defendant bank and accepted by the plaintiff as conclusive contract"

I must stress that this Court does not favour parties taking up actions after another forum has made its decision on the same issue. Here the plaintiff seeks for a declaration and by O. 15 r. 16 of the Rules of the High Court 1980, the Court can make binding declarations of right whether or not consequential relief is or could be claimed and, also by O. 15 r. 16, such proceeding or action is not open to objection. The Court would have sustained the defendant's Counsel's preliminary objection if there was valid ground to do so but learned Counsel was not able to move this Court merely by citing the Land Ordinance without substance to support his objections. Accordingly, I overrule the defendant's Counsel's objection.

It is not the function of this Court to make declarations which are academic. See: *Low Kum Yoon v. Teh Kim Huah* [1979] 1 MLJ 83 and see also *Douglas A Pedley v. Majlis Ugama Islam Pulau Pinang & Anor.* [1990] 2 CLJ (Rep) 24.

Additionally, it is not this Court's intention to make worthless declarations which may affect other parties but where those parties are not joined or to make declarations which may then affect other parties who in turn then have to seek the Court's further orders. Here it appears that the Court will have to consider the evidence of the Collector and the purchasers of the lands. So by virtue of O. 15 r. 4(3) of the Rules of the High Court 1980, I order the plaintiff to take the necessary action and I postpone the hearing of this matter to a date to be fixed after plaintiff confirms to the registry that its documentation is complete. No costs.

Also found at [1992] 2 CLJ 1084